



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 2, 2020

CASE NUMBER: 2019OPA-0770

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion	Not Sustained (Training Referral)
# 2	6.220-POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope	Not Sustained (Training Referral)
# 3	6.220-POL-2 Conducting a Terry Stop 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have...	Not Sustained (Training Referral)
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that the Named Employee, as the South Anti-Crime Team supervisor, caused six individuals to be detained without reasonable suspicion, was responsible for the individuals' detentions going beyond a reasonable scope, and oversaw the individuals get frisked for weapons without a sufficient legal basis to believe that they were armed and dangerous. It was further alleged that the report generated by the Named Employee may have contained inaccurate information.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

6.220-POL-2 Conducting a Terry Stop 1. Terry Stops are Seizures Based Upon Reasonable Suspicion

Officers assigned to the South Precinct Anti-Crime Team (ACT) were assisting the Gang Unit in locating the subject in a drive-by shooting. Named Employee #1 was the South ACT Sergeant and was supervising the involvement of ACT. The officers under NE#1's supervision detained the subject, as well as six other individuals who were with the subject. The subject was placed under arrest. The ACT officers had the six individuals stand up and face a wall and frisked them for weapons. The individuals were detained for a short period of time (approximately five minutes) until NE#1 determined that there was not a sufficient legal basis to continue the stop. None of the individuals were handcuffed.

One of the individuals made an allegation that the stop was based on bias. NE#1 conducted a Bias Review into the incident. While not relevant to the allegations in this case, OPA notes that he should not have done so as he was actively involved in the underlying incident. He was counseled on this decision by his chain of command via a



Supervisor Action. During the supervisory review of the Bias Review, a Lieutenant and Captain identified potential issues with the detention and frisking of the individuals. Specifically, the Captain noted the following:

Although there does not appear to be any bias involved with this incident, the detention and frisk of the six individuals appears to be a violation of SPD Manual Section 6.220 and Washington law: Proximity to Others Suspected of Criminal Activity. Officers may not stop an individual merely because the individual is in proximity to others who are suspected of criminal activity. *State v. Thompson*, 93 Wn.2d 838, 841, 613 P.2d 525 (1980).

The Captain referred this matter to OPA, and this investigation ensued.

OPA reviewed the documentation generated concerning this incident. In her report, one of the ACT officers wrote:

Gang detectives advised they needed the subjects who were with the warrant suspect identified for the investigation. The other suspects involved in the drive by shooting have not yet been identified and it was believed that the warrant suspect knew and possibly associates with the other suspects. It was unknown at the time if the additional suspects were among the group walking with the warrant suspect.

She further wrote that: “[ACT] Officers were directed by SPD gang unit detectives to stop and identify all subjects with known suspect of a drive by shooting.”

In his report, NE#1 noted that the subject was with other individuals at the time of the shooting and that those individuals had yet to be identified. He documented the following: “At the request of Gang Unit detectives, South ACT officers detained these individuals and conducted a frisk for weapons of these individuals based on the investigative detention being for a crime involving firearms.”

At his OPA interview, NE#1 said that he understood that the Gangs Unit wanted the individuals to be identified as they could have been involved in the shooting; however, he confirmed that the Gangs Unit did not provide individualized reasonable suspicion for the detention of each party. NE#1 said that he did not direct the ACT officers to frisk the individuals against the wall; however, he told OPA that this was generally consistent with ACT tactics and was appropriate to ensure scene safety.

SPD Policy 6.220-POL-2 governs Terry stops and stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-1.) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*)



Based on OPA's review of the totality of the evidence, OPA concurs with the Captain that there was insufficient reasonable suspicion to detain the six individuals. While there was certainly a law enforcement interest in identifying those present with the subject at the time of the shooting, there was no basis to conclude that the individuals were them. Notably, the shooting took place nearly three months prior to this incident and, thus, was not close in time to the detentions. Moreover, there was no evidence suggesting that any the individuals matched the descriptions of accomplices of the subject. Lastly, even if the Gangs Unit desired for these individuals to be identified, NE#1 acknowledged that the Gangs Unit did not relay information establishing reasonable suspicion to detain each.

While OPA finds that there was no legal basis to detain the individuals, OPA does not believe that this constituted an intentional violation of policy for which discipline is necessitated. To the contrary, OPA finds that NE#1 was trying to do what he believed to be the right thing under the circumstances and made a mistake. As such, OPA recommends that he received the below Training Referral rather than a Sustained finding.

- **Training Referral:** OPA requests that NE#1's chain of command debrief this incident with NE#1 and, specifically, discuss the issues and concerns surrounding the detentions of the six individuals. The chain of command should remind NE#1 of the legal standard for conducting Terry stops, including focusing on the case law identified by the Captain – *State v. Thompson*, 93 Wn.2d 838, 841, 613 P.2d 525 (1980). This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

6.220-POL-2 Conducting a Terry Stop 2. During a Terry Stop, Officers Will Limit the Seizure to a Reasonable Scope

SPD Policy 6.220-POL-3 requires that officers limit a seizure to a reasonable scope. The policy further states that: "Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a Terry stop into an arrest requiring probable cause or an arrest warrant." (SPD Policy 6.200-POL-3.) Included among such actions are placing a person against a wall and frisking a person for weapons. With regard to the frisk for weapons, SPD Policy 6.220-POL-8 states that: "Officers may conduct a frisk or a pat-down of a stopped subject only if they reasonably suspect that the subject may be armed and presently dangerous." The policy explains that: "The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience." (SPD Policy 6.220-POL-8.) The policy provides a non-exclusive list of factors supporting such a search. (*See id.*)

OPA concludes that, as the detentions were not supported by reasonable suspicion, the stops also exceeded a reasonable scope when the officers placed the individuals against the wall and frisked then for weapons. As discussed above, aside from the fact that the individuals were standing with a shooting subject, there was no basis to believe that the individuals had engaged in any criminal activity or were armed. The detentions occurred months after the crime occurred and there was no temporal reason to think that the individuals were involved in the shooting. None of the individuals engaged in furtive movements or were wearing inordinately baggy clothing that could conceal a weapon. Lastly, while the officers were concerned about a backpack possessed by the subject, it did not appear that any of the individuals possessed it at the time of the detentions and frisks.



As with Allegation #1, OPA finds that NE#1 and the officers under his command were acting in good faith. Moreover, OPA recognizes that the manner in which the officers handled this incident was consistent with their ACT training and experience. However, this does not, by itself, justify the extended scope of the seizure and the frisks. They must have been supported by the individual facts of this case, not by general procedure. Ultimately, OPA finds that they were not warranted here. That being said, OPA issues NE#1 the below Training Referral rather than a Sustained finding.

- **Training Referral:** OPA requests that NE#1's chain of command debrief the decision by ACT officers under NE#1's command to place the individuals against the wall and to frisk them for weapons. The chain of command should critically analyze this incident and discuss the issues and concerns with the officers' actions here. The chain of command should remind NE#1 of the legal standard for extending the scope of a stop and for conducting a weapons frisk. This retraining and associated counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

6.220-POL-2 Conducting a Terry Stop 6. Officers May Conduct a Frisk of Stopped Subject(s) Only if They Have...

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegations #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a report, as well as mandates that such reports be complete, thorough, and accurate. This allegation was classified based on potential inaccuracies that were identified in NE#1's report.

However, after conducting this investigation, including interviewing NE#1, OPA does not believe that NE#1 report contained inconsistencies that rose to the level of policy violations. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**